

**REMARKS:**

In the Office Action dated July 25, 2008, claims 1, 10, 11, 13 and 17-35, in the above-identified U.S. patent application were rejected. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 1, 25, 26 and 30-35 remain in this application, claims 2-24 and 27-29 have been canceled and new claims 36 and 37 have been added to the application.

Claims 1, 10, 11, 13 and 17-35 were rejected under 35 USC §103(a) as unpatentable over Sievernich (CA 2,334,955 corresponds to W099/65314). Sievernich does not disclose or suggest ternary synergistic herbicidal mixtures, comprising 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-l-methyl-5-hydroxy-lH-pyrazole (la.29 in the present application), clopyralid and either sulfonamide or a triazine. Though Sievernich discloses 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-l-methyl-5-hydroxy-lH-pyrazole, none of the ternary mixtures disclosed by Sievernich et al. contains clopyralid as component B) and either sulfonamide or a triazine as component C). Sievernich provides no indication as to how one might select the inventive component B from the wide range of potential mixing partners and to choose an additional third component C which results in a synergistic effect. Thus if one skilled in the art looked for ternary synergistic mixtures other than those exemplified in the reference, at most they would consider ternary mixtures based on the binary mixtures exemplified in Sievernich. Due to the complex interactions of different active ingredients, there is no reason for one of skill in the art, having a wide selection of synergistically effective binary and ternary mixtures at his disposal, to take a risk with random mixtures from the generic disclosure.

The subject matter of the pending application is not just effective, but also synergistic herbicidal mixtures as demonstrated by the respective experimental data. The Colby-value, which stands for the calculated additive effect [%], has to be compared to the observed effect (damage [%]). This data demonstrates that the claimed inventive mixtures result in more than a simply additive effect. These results are surprising and non-obvious in view of the prior art. One of skill in the art would not have guessed or known which of the numerous possible combinations from a generic disclosure or other prior art would show synergistic activity and not detrimental effects. In view of the above amendments and discussion, applicants request that this rejection be withdrawn.

Claims 1, 10, 11, 13 and 17-35 were provisionally rejected under the judicially created doctrine of obviousness type double patenting as unpatentable over claims 1, 8, 9, and 15-32 of co-pending application no. 10/522,157. The present claims are directed to a synergistic herbicidal combination of 4-[2-methyl-3-(4,5-dihydroisoxazol-3-yl)-4-methylsulfonyl-benzoyl]-1-methyl-5-hydroxy-1H-pyrazole, clopyralid and sulfonamide or triazine. Applicants respectfully point out that the subject matter of the pending application is not effective but synergistic herbicidal mixtures. It is known in the art that a synergistic effect cannot be predicted from the herbicidal activity of the individual components. Applicants point out that components B and C in the presently claimed invention are different from components B and C in co-pending application no. 10/522,157. Applicants contend that the synergistic effect of the presently claimed herbicidal combination could not have been predicted and therefore would not have been obvious over claims 1, 8, 9, and 15-32 of co-pending application no. 10/522,157. In view of the

above amendments and discussion, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 1, 25, 26 and 30-37 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

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